

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BRYAN MESSENGER,

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

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Defendant.

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Case No.:

DECLARATION OF LISA P. KESTLER, Ph.D.

I, Lisa P. Kestler, declare as follows:

1. The facts in this declaration are based on my personal knowledge. If called to testify, I could testify competently to the facts herein.

2. I am 43 years old.

3. I reside in Lawrenceville, New Jersey.

4. I graduated from Princeton University in 1996 with an AB in Psychology. In 2000, I obtained an MA in Clinical Psychology from Emory University. I also obtained my PhD in Clinical Psychology from Emory University in 2005.

5. As part of my graduate training at Emory University, I conducted psychological evaluations for diagnosis of specific learning disabilities and ADHD. As a Pre-Doctoral Intern at Jersey Shore University Medical Center, I administered psychological and neuropsychological measures to children and adults. In my role as a Post-Doctoral Clinician and Researcher at The Gifted Child Clinic, I conducted psychoeducational evaluations, including tests of intelligence (Weschler Scales and the Stanford-Binet), achievement, memory, attention, and other neuropsychological functions.

6. I am a clinical psychologist in private practice and have expert knowledge of ADHD and dyslexia. I offer multiple services including comprehensive assessment for ADHD, learning disabilities, dyslexia, giftedness, and neuropsychological problems.

7. My full curriculum vitae is attached to this Declaration as Exhibit A.

8. Since November 2014, I have worked as a consultant at the Dyslexia Center of Princeton. In this capacity, I routinely conduct psychoeducational evaluations for learning disabilities and dyslexia.

9. On November 2, 2015, I conducted a psychoeducational evaluation of Bryan Messenger at the Dyslexia Center of Princeton.

10. I administered to Dr. Messenger ten (10) subtests of the Weschler Adult Intelligence Scale—Fourth Edition (WAIS-IV). In addition, I administered Weschler Individual Achievement Test (WIAT—III) subtests. My full assessment is attached as Exhibit B.

- a. The Wechsler Adult Intelligence Scale –Fourth Edition (WAIS-IV) is a valid test of cognitive ability for adults. It is the gold standard in intelligence testing. The WAIS-IV is composed of 10 core subtests that comprise the Full Scale IQ. The General Ability Index (GAI) consists of the Similarities, Vocabulary and

Information subtests from the Verbal Comprehension Index and the Block Design, Matrix Reasoning and Visual Puzzles subtests from the Perceptual Reasoning Index. The GAI is clinically useful because it can be used as a measure of cognitive abilities that are less vulnerable to impairments of processing and working memory. Reliability studies of the WAIS-IV have demonstrated good internal consistency, test-retest stability, and inter-rater reliability.

- b. Similarly, the Wechsler Individual Achievement Test – Third Edition (WIAT-III) is the gold standard in achievement testing. Normed on children and adults through age 60, it provides percentile ranks, age-equivalent, and grade-equivalent scores across several areas of academic achievement, including mathematics, reading, written expression, and oral language. Each composite score is based on a number of subtests; scores on individual subtests can reveal specific skill deficits.
- c. The Gray Oral Reading Test – Fifth Edition (GORT-5) is one of the most widely used measures of oral reading fluency and comprehension in the United States. The GORT-5 is used as part of a battery of tests for diagnosis of specific reading disabilities in children through young adults. It is normed through age 23 years 11 months, so older adults cannot be compared to same-age peers, but scores can be compared to the scores of average-scoring younger adults or children to obtain grade-equivalents.
- d. The evaluation was completed one-on-one in a distraction-free room. Each of the tests were administered according to standardized procedures. Instructions for all subtests were read to Dr. Messenger. On the WAIS-IV, the following subtests

have time-limits on item administration: Block Design, Arithmetic, Symbol Search, Visual Puzzles, and Coding. On the WIAT-III, the following subtests are timed: Word Reading, Pseudoword Reading, and Oral Reading Fluency. The following WIAT-III subtests have time-limits: Oral Word Fluency and Math Fluency. Each reading passage on the GORT-5 is timed. Items on the WIAT-III that required Dr. Messenger to read included Word Reading, Pseudoword Reading, Reading Comprehension, and Oral Reading Fluency. On the GORT-5, Dr. Messenger was required to read each text passage aloud; reading comprehension questions were read to him, according to standardized administration. No items on the WAIS-IV required Dr. Messenger to read.

11. The assessment results clearly demonstrate that Dr. Messenger has Moderate-Severe Dyseidetic Dyslexia/Mild-Moderate Dysphonetic Dyslexia.¹ His pattern of decoding and encoding written language indicates significant difficulty perceiving and remembering whole words, as well as significant difficulty integrating symbols and sounds to use rules of phonics for reading and spelling.

12. Dr. Messenger's general cognitive ability is in the superior range, with a full-scale IQ OF 126. In contrast, however, he demonstrated clinically significant weakness in Basic Reading Skills, and he also demonstrated poor spelling, sentence composition, and grammar and mechanics in composing essays. His level of oral reading fluency is equivalent to that of an average 4th grade-4th month student (based on Gray Oral Reading Test).

¹ Dyslexia is synonymous with Reading Disorder. There are four levels of dyslexia. From the least severe level to the most severe, they are: Problematic, Mild, Moderate, and Severe. Dyseidetic dyslexia is a reduced ability to perceive whole words for instantaneous reading and spelling, despite the word having been seen on repeated occasions. Dysphonetic dyslexia is a reduced ability to integrate symbols and sounds, resulting in difficulty developing and using word attack skills to decode single, unknown words.

13. Throughout my 2015 assessment, Dr. Messenger demonstrated significant slowness on tasks that involved reading, spelling, or written expression. Dyslexia makes it difficult to read, write, and comprehend written language with accuracy and fluency. This is particularly the case for Dr. Messenger, as demonstrated by my 2015 assessment of him.

14. In addition to my 2015 assessment of Dr. Messenger, I have also reviewed the results of testing administered to him during elementary school. Those results are attached as Exhibit C. Those test results also support a diagnosis of dyslexia and demonstrate that Dr. Messenger has had this disability since childhood.

- a. Dr. Messenger's records from 5th grade testing on the Stanford Achievement Test include percentiles based on national norms. He scored in the 14th percentile on Reading Vocabulary, in the 7th percentile on Reading Comprehension, and in the 7th percentile for Total Reading. These scores are clearly in the Below Average range, and these results alone are enough to demonstrate dyslexia based on the current DSM-5 criteria.
- b. Dr. Messenger's IEP documents in 2nd through 5th grades, attached as Exhibit D, classified him as having a "specific learning disability." Although formal testing results are not available, this diagnosis was presumably made by a psychologist, as the records indicate that the Child Study Team including Dr. Messenger's mother met to review testing results at "Canyon Crest psychologist's office." His IEP goals included strengthening phonics skills, ability to read Dolch words (phonetically irregular, or "sight," words), reading fluency, and writing skills.

- c. Dr. Messenger's middle school IEP, attached as Exhibit E, continued to refer to difficulties in written language and basic reading skills. On his high school IEP from October 1996, "Present Levels of Performance" includes scores from the WCJ, which is presumably the Woodcock Johnson, another commonly administered standardized test of academic achievement. Scores appear to be grade level equivalents, with Basic Reading at a 4.1, Reading Comprehension at 8.5, Basic Writing at 4.6, and Written Expression at 8.4. This IEP is attached as Exhibit F. Assuming Dr. Messenger was in the 10th grade at the time, these results are consistent with his prior testing which indicates significantly below average performance.


15. Dr. Messenger meets criteria for Specific Learning Disabilities in Reading and Written Expression – based on either set of criteria, from before the DSM-5 revision or after. Prior to the DSM-5 revision, a significant discrepancy between ability and achievement was necessary to identify a learning disability. After the revision, the DSM-5 now requires that skills be "substantially and quantifiably below those expected for the individual's age." It is not clear what Dr. Messenger's ability scores were as a child, but his achievement scores can be said to be "substantially and quantifiably below those expected for the individual's age." Given Dr. Messenger's intellectual ability in the Very Superior ("Gifted") range, it would be expected that his academic skills would be much higher than his same-age peers. This is not the case. Dr. Messenger's current reading comprehension and fluency skills are over 2½ standard deviations below his General Ability level. His scores for written expression are nearly 2 standard deviations below. Despite having these remarkable disabilities in reading and writing, Dr. Messenger has succeeded in completing all but the final requirements for achieving his life goal

of becoming a pediatrician, as stated in his 10th grade IEP. He has a clear history of documented learning disability, from elementary school through adulthood. He also has a history of demonstrating that he can do great things when he has appropriate support, and that he unfairly struggles due to his disability when the supports are not made available.

16. It is my professional opinion based upon significant testing (as discussed above) and my expertise that, due to his dyslexia, Dr. Messenger needs double time to complete tests, including but not limited to the USMLE Step 2 CK. His level of fluency in reading and writing are below the level that he can demonstrate his knowledge without additional time. During the 2015 evaluation, Dr. Messenger's pace on timed and untimed tests that involve written language indicates that he needs at least double time.

17. Absent double time on the USMLE Step 2 CK, Dr. Messenger will not be able to demonstrate his knowledge.

Date: May 24, 2017



Lisa P. Kestler, PhD